

MARYLAND'S WESTERN BOUNDARY ♦ ANNAPOLIS, 1825

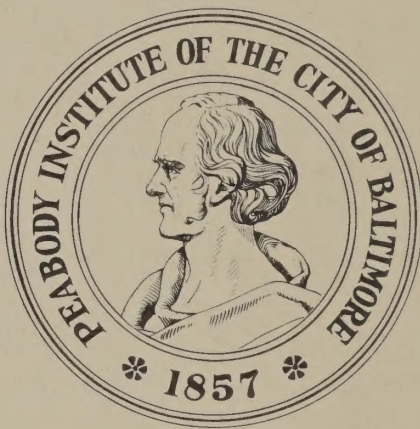


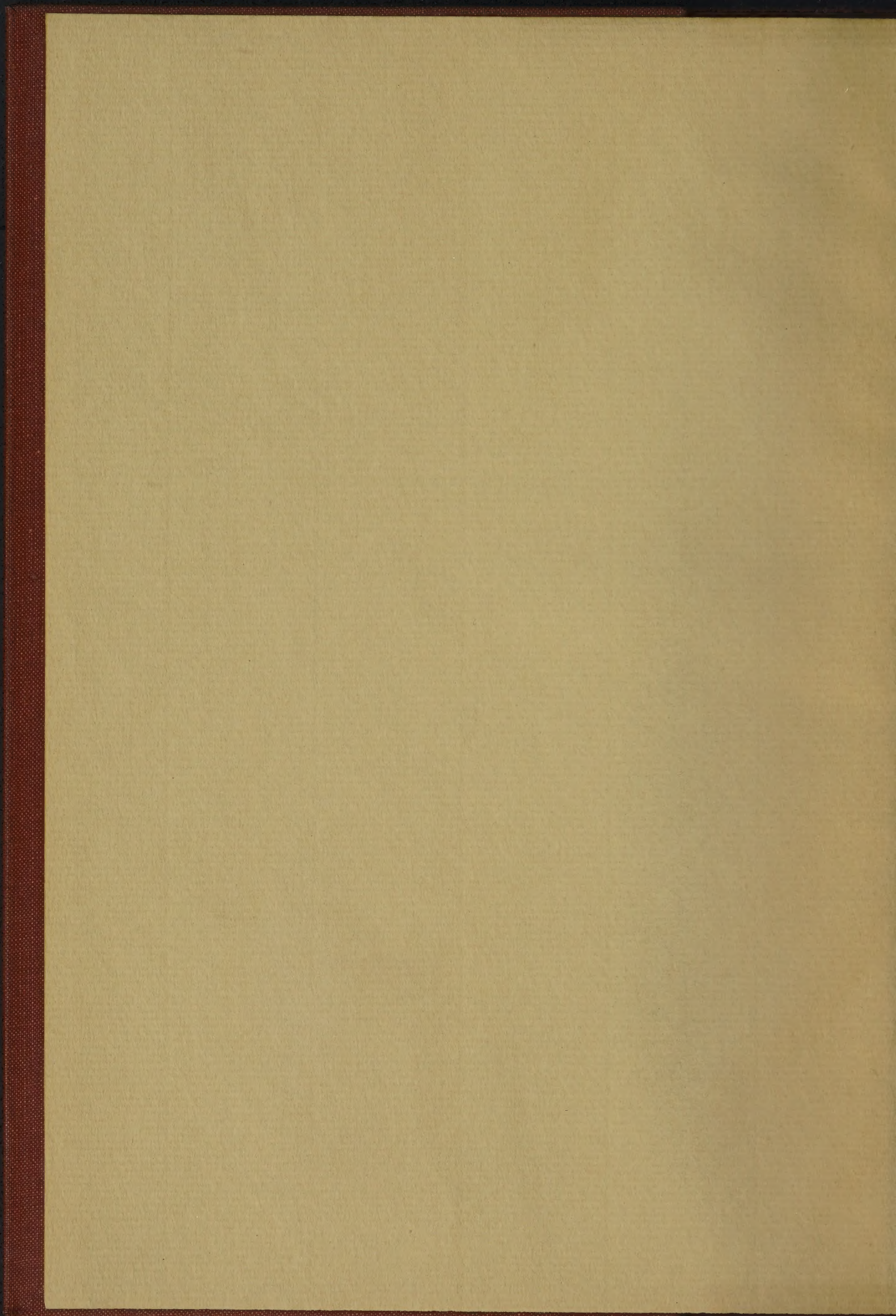


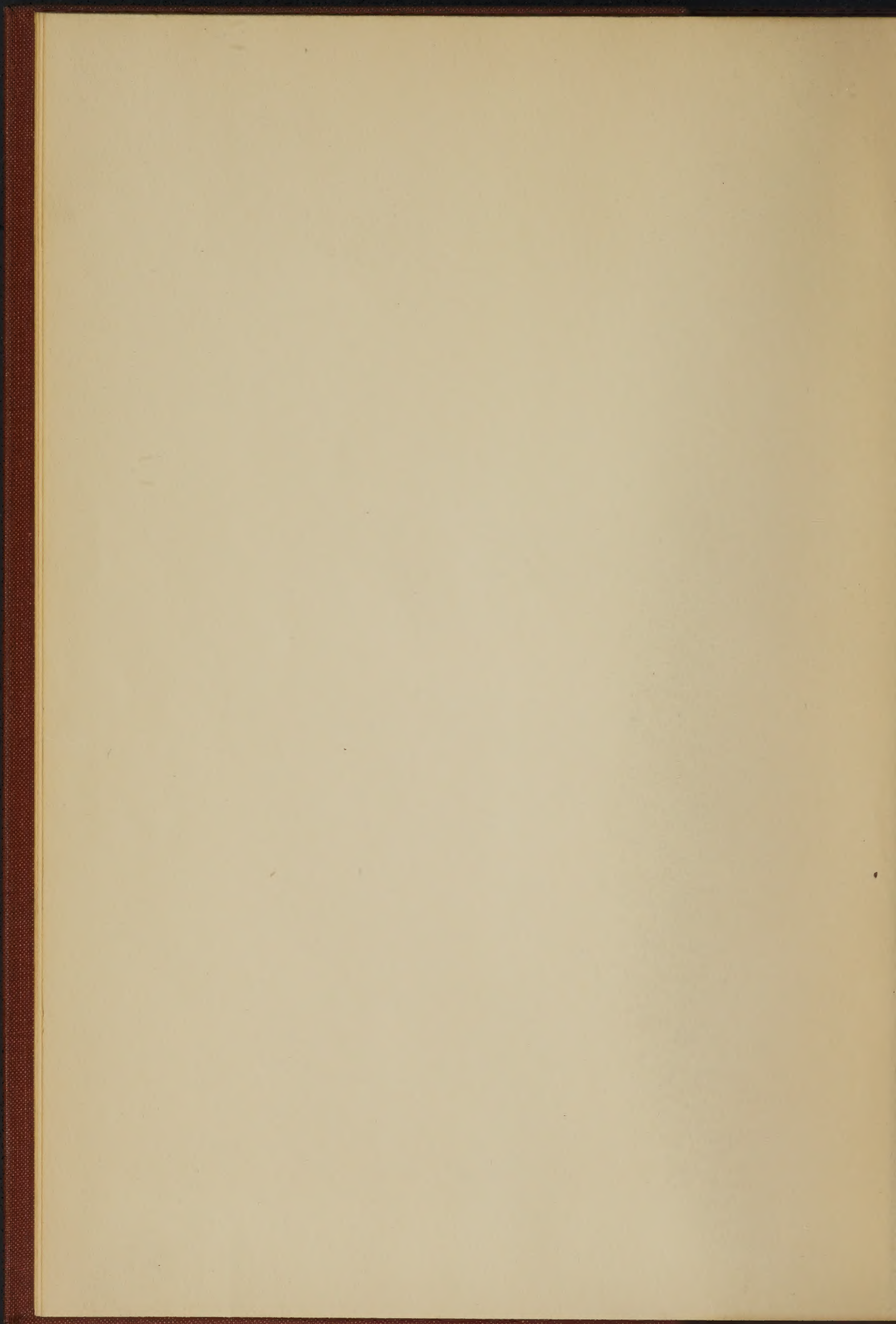


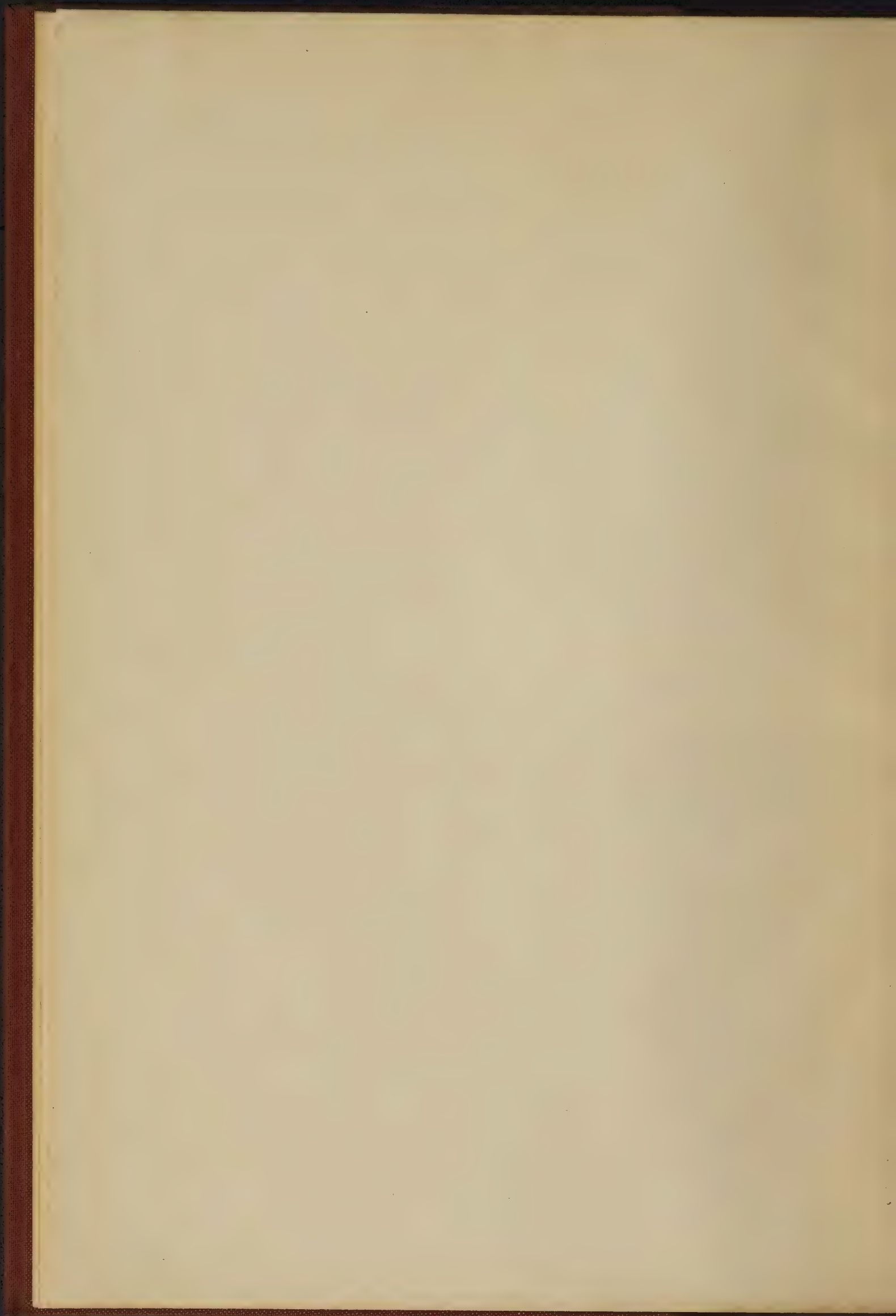
975.2
M393C2
RB - 4

PEABODY INSTITUTE
· LIBRARY ·
BALTIMORE









Page
REPORT

16
OF THE

COMMISSIONERS

CONCERNING THE

WESTERN LIMITS OF THE STATE.

ANNAPOLIS:

J. HUGHES, PRINTER.



REPORT.

To the Honorable

The General Assembly of Maryland.

Having been appointed one of the commissioners to settle and adjust the western limits of this state, and the dividing line and boundary between this state and the commonwealth of Virginia, it becomes a duty to make known to the Legislature the causes which prevented the commissioners from proceeding to any examination, which might eventuate in a final termination of the disputed territory.

When I arrived at Smith's Tavern, the place of rendezvous, the unexpected and mournful intelligence of the death of the late chancellor Johnson first reached me; an event deeply to be deplored as a private loss or a public calamity. As the surviving commissioners were from that place but a day's journey to Fairfax Stone, which had been designated in the act of Assembly of Virginia as the place of beginning, it was deemed most expedient to visit it, and ascertain if this call would answer that of the Maryland act, and if not, how far Fairfax Stone might be distant from "the most western source of the north branch of the Potomac river," which was the point of beginning specified in the Maryland law. It was soon discovered that the difference between the two places of beginning embraced a section of country

about one mile in width and thirty-six miles in length, which was deemed too important to be abandoned unless under express instructions to that effect. The reasons which induced the Maryland commissioners to terminate the business of adjustment will be found at length in copies of the correspondence herewith transmitted, marked A, B, C, D, E. I declined taking a meridional line because the transit instrument had been rendered useless and I wished the state to express some opinion upon the point of beginning.

If the Legislature of Maryland contemplate new modelling their law to meet the views of Virginia, it will be necessary to give the commissioners the power to summon and swear witnesses, and to vest a majority of the commissioners with the powers of the whole.

If upon an investigation of the title the state has, it should be found that the act of 1718 ch. 206, if acted under, will be an abandonment of the rights of Maryland to nearly an half a million of acres of territory, it may be considered fortunate that the phraseology of the Virginia and Maryland laws have essentially differed from each other.

The only question for consideration is, whether the North or South branch is to be considered "the first fountain of the river of Pattowmack." In the consideration of that question, the charter granted to Cecil Lord Baron of Baltimore bearing date at Westminster, the

twentieth day of June, in the eighth year of Charles the second, the charter granted to Ralph Lord Hopton and others, bearing date at St. Germaines en Ley the eighteenth of September, in the 1st year of Charles the second, other letters patent to Henry Earl of St. Alban's and others bearing date the eight day of May, in the one and twentieth year of the said reign, and other letters patent to Thomas Lord Culpepper bearing date at Westminster, the twenty-seventh day of September, in the fourth year of James the second, must be construed in strict connection. I do not consider it irrelevant to the subject here to remark, that properly authenticated copies of these charters are not to be obtained either in Maryland or Virginia, and what appears strikingly strange no copy which would be admitted as evidence by a tribunal properly constituted to decide this dispute, exists on this side of the Atlantic of the original charter granted to Lord Baltimore, the adventurous and venerable founder of Maryland.

These grants of the first, eighth, and twenty first of Charles the second, and the fourth of James the second, contained, as is alledged, the disputed territory, to which Thomas Lord Culpepper became the sole heir, and whose right, if any he had, descended to his heir at law, Thomas Lord Fairfax, Baron of Cameron, who came into America, opened a land office, and made

grants, but he like Lord Baltimore, was prohibited from making grants in this portion of territory, by a royal proclamation, dated the seventh of October, 1763.

Thomas Lord Fairfax, Baron of Cameron, died, having devised his right to Denny Fairfax. About the time of the death of Lord Fairfax, the colony of Virginia, having become an independent and sovereign power, asserted its right to this territory, founding its claim on the principle of Denny Fairfax being an alien, obtained possession of the records, documents, and entries of the lands made by individuals in the land office of Thomas Lord Fairfax, removed the same to the city of Richmond, and placed them in the keeping of the register of the land office there, and commenced issuing warrants.

In the year 1796, or perhaps earlier, a company of gentlemen of whom John Marshall, the present chief justice of the United States was one, purchased from Denny Fairfax the aforementioned devisee, all his claim, and the Commonwealth of Virginia subsequently obtained the right of those gentlemen. The question still recurs to the phraseology of the original charters, and the location of the first fountain of the river Potomac. If the South Branch traced to its source be the first fountain, then the act of 1718, chapter 206, will be an aban-

donment of nearly an half a million of acres, a large portion of which is extremely and proverbially fertile.

The present line (as it is called by a vulgar error,) between Virginia and Maryland, was laid down by Francis Deakins, with a view to locate bounties of land to the war-worn veterans of the Maryland line, and in a spirit of grateful remembrance for their services, he was expressly enjoined to avoid all conflicting title. This line is declared by the legislature of this state in the year 1788 "to be far within that which this state may rightfully claim as its western boundary; and that at a time of more leisure, the consideration of the legislature ought to be drawn to the western boundaries of this state."

This communication would have been made sooner, but the plat shewing the distance between Fairfax Stone and the most western source of the North Branch, was not forwarded by the chief engineer until a few days since, and will be transmitted to the General Assembly by my worthy colleague, Col. Chambers, in whose possession it is.

I have the honor, gentlemen, to be,

With sentiments of high respect

And consideration, yours,

JAMES BOYLE.

[The text on this page is extremely faded and illegible. It appears to be a single column of handwritten or printed text, possibly in a historical or scientific context. The left edge of the page is heavily damaged and ragged.]

CORRESPONDENCE.

A.

SMITH'S TAVERN, August 7, 1824.

GENTLEMEN,—In the conference which we had the honor to hold with you on the 4th instant, it was stated by us, that we should feel authorised by our commission to ascertain the point which might correctly be termed, the western source of the North Branch of the Potomac, and to commence the divisional line between the states of Maryland and Virginia from that source. We had also the honor to enquire of you, whether by the commission under which you act, you considered yourselves authorised to commence at any other spot, than at the Fairfax Stone, in the event of your being convinced, by an examination of the streams at the head of the river, that stone was not located at the head of the stream which ought properly to be considered the true source of the western branch of the Potomac river. We then understood from you, that you would decline giving us an answer to the enquiry until you had viewed the streams at the head of the north branch.

Having since that conference taken a view of these streams, we have now to invite your attention to the subject, and to request an answer to our enquiry. In submitting this subject to your consideration, at this mo-

ment, we feel it due to the candid spirit in which our proceedings have progressed, to inform you, that our observations have resulted in the most decisive conviction, that the fork of the river at which the Fairfax Stone is placed, is not the proper source of the North branch. We beg it to be understood throughout, that we do not by any expressions used in this communication, intend to assume the fact, of the North Branch at any of its streams being the proper source or fountain of the Potomac river. This is a question certainly not now to be agitated by us. The spirit of conciliation which has influenced our government to propose a beginning at the western source of the North Branch, from which to run a dividing line, has deprived us of the privilege of urging the reasons on which the claim to the South Branch as the first fountain of the river, could be sustained. The same reasons which induced the state of Virginia to claim the North branch as the first fountain and the State of Maryland to attempt an adjustment of the lines on the terms mentioned in her late statute, (which we had the honor to submit to you) appear to us to apply with the strongest possible influence in determining the stream westward of the Fairfax Stone as the source of the North Branch. The propriety of asserting and enforcing in detail, the reasons by which we sustain our opinion, that the Western Fork can alone be regarded as the proper source of the North Branch, must be determined by the

construction which you shall give to the powers vested by your commission. We therefore forbear urging them, until we have the pleasure to receive your answer.

With sentiments of the highest respect,

We have the honor to be,

Your humble servants,

JAMES BOYLE,

EZEKIEL F. CHAMBERS,

Commissioners on the part of the State of Maryland.

To H. L. Opie, T. F. Mason, and H. Boye, Esqrs.

Commissioners on the part of Virginia.

True copy from the original,

Test, JOHN BREWER,

Secretary to the Maryland Commissioners.

B.

To James Boyle and E. F. Chambers Esquires, Commissioners on the part of the State of Maryland.

GENTLEMEN—We regret to perceive from your letter of this morning, as well as from the various conversations we have held with you upon the subject, that there is no probability left of our being able to adjust the boundary line between our respective states, which it was the object of our mission to settle. It is true that in our first interview with you in relation to this matter that we declined to enter into the discussion of any hy-

pothetical questions or enquire into the extent of powers, which the state of facts might render it entirely unnecessary; and the more especially, as we derived from that interview, the impression that you would feel yourselves authorised to commence at the "Fairfax stone," or any other point, you might be satisfied, was in fact, the true source of the North branch of the river Potomac.— From subsequent explanations, however, as well as from the tenor of your written communication, it seems that in this impression, we were mistaken, and that you do not now feel yourselves authorised to enquire further, than to ascertain the most Western source of the North branch, and that in doing this, you are further bound to select the most Western tributary stream or spring without regard to the relative quantity of water, or the point at which it may contribute its supply.

This alone, would in our opinion, raise an insuperable obstacle to our further proceeding; but in the same spirit of candor which has marked your communications upon the subject, we feel bound to repeat, what we have before declared to you, that by the act of Assembly under which we have been appointed, we are required, in running the contemplated line, to commence at *Fairfax stone on the head waters of the North Branch of the Potomac river*, and further, that upon viewing the whole ground of controversy, the various tributary streams and springs, we are under the most clear and entire conviction,

that the fact assumed by our act of Assembly of Fairfax Stone and the head waters of the main North Branch of Potomac river, being identical, is entirely correct.

In the course of your communication, you have been pleased to state "that you do not by any expression's used by you, intend to assume the fact of the North branch or any of its streams being the proper source or fountain of the river Potomac," and we entirely concur with you, when you add "that this is certainly a question not now to be agitated by us." It has been too well settled, and its settlement too long acquiesced in and solemnly recognized by all parties ever again to be brought into doubt or controversy.

Very respectfully,

We have the honor to be,

Gentlemen your obedient servants,

H. L. OPIE,

THO: S. MASON,

HERMAN BOYE.

Smith's Tavern, August 7. 1824.

True copy from the original,

Test,

JOHN BREWER,

Secretary to the commissioners on the part of Maryland.

C.

SMITH'S TAVERN, August 8, 1824.

GENTLEMEN:—Your answer to the communication of Col. Boyle and myself of yesterday morning, was received at too late a period last night, to permit a reply until this morning. Col. Boyle declines continuing the correspondence, for reasons with which he will acquaint you. Believing, however, that an omission to reply to you, might possibly be considered as an acknowledgement of the correctness of your statements and conclusions, I must claim permission to say a word. The language used by you in relation to the South branch, has surprised me exceedingly, and I am utterly at a loss to conjecture on what authority you have introduced it into your communication. The true source, or *first fountain* of the Potomac was certainly the proper boundary of the state of Maryland. Whether it was to be found at the South branch, or at the North branch was a question of controversy between Maryland and Virginia, to adjust which, various essays were made, and at one time, commissioners were appointed to determine the question, who did not however act finally on the subject.

Your answer asserts, "that it has been too well settled, and its settlement too long acquiesced in, and solemnly recognized by all parties, ever again to be brought into doubt or controversy." When, and by what act, or

what mode this settlement or recognition was made by Maryland, I am yet to learn. That the act of assembly under which her commissioners are now convened, was passed in a spirit of liberal feeling is admitted. The authorities of the state at that time appear to have been willing that the most western source of the North branch, should by compromise be received in lieu of the first fountain of the river, but I must still ~~be~~ indulged in the belief that no settlement of this question has ever been recognised by the state of Maryland in any solemn act or otherwise.

In relation to the other parts of your letter, I do not deem it material to reply. I will however, express my regret, that you have alluded to "various conversations" as the grounds of certain opinions formed by you.

Our situation has given occasion to many informal and casual conversations, which it was not expected, and certainly not intended by me to have been brought into view in any official proceeding on this subject.

Under this impression, our communication of yesterday omitted the notice of any conversation, except that which took place at the formal conference on the 4th. That conference was the only one at which I considered myself acting officially, and therefore the conversation at that time alone, was considered proper for official notice.

The danger of relying on casual and unofficial conversation, is fully exemplified in this transaction, in the

progress, of which references are made by you from that authority, not exactly in accordance with the views which it was my intention to convey.

I remain gentlemen, with great respect,

Your very humble servant,

E. F. CHAMBERS.

To H. L. Opie, T. F. Mason & H. Boye, Esqrs.

Commissioners from Virginia.

True copy from the original,

Test,

JOHN BREWER,

Secretary to the Maryland Commissioners.

D.

Smith's Tavern, August 8th, 1824.

GENTLEMEN,

In declining a continuance of the correspondence between us, I do so, because I consider your powers of so limited a nature, that it can lead to no happy result. Could I believe you had any discretionary power, I would willingly continue a communication, but knowing you are bound by the act of Assembly of Virginia to commence the line at Fairfax Stone, and that the Maryland Commissioners must begin at the most western source of the North Branch of the Potomac river, a correspondence is entirely useless. Tied down as both sides are by their respective statutes, the only question

for consideration is, whether Fairfax Stone is at the most western source of the North Branch of the Potomac river. I am of opinion it is not, and as we have no mutual point of beginning, I consider the object of the commission cannot be effected. I am unwilling to continue a discussion of any points extraneous to the main question, which is, where are we to begin? And as the two commissioners cannot agree where to begin the line, I must determine to end a correspondence which can only lead us away from the true object of enquiry. I am sorry to differ on this subject from my colleague, but as I act on my own responsibility, so I must answer my government if I err. I know that in all the conversations I have had with you individually or collectively, officially or unofficially, I have stated that the Maryland statute marked out a beginning, from which I did not feel myself at liberty to depart. A discretion was vested with the Maryland commission to settle and adjust any claim of their state to territory claimed by Virginia, but as you appear to have no such authority, I consider the want of mutuality as depriving us of the right to exercise it

The powers of the two commissioners do not correspond, and cannot consequently be brought to unite.

I have the honor to remain your friend,

JAMES BOYLE.

To H. L. Opie, T. F. Mason & J. Boyle, Esqr's.

Commissioners on the part of Virginia.

True copy from the original,

Test,

JOHN BREWER,

Secretary to the Maryland Commissioners.

E.

Smith's Tavern, August 8th, 1824.

To J. Boyle and E. F. Chambers, Esquires.

GENTLEMEN,

We have to acknowledge the receipt of your separate letters of this morning, and in reply, beg leave to state, that we entirely concur with Col. Boyle in thinking that the object of our mission cannot in any manner be advanced by any further correspondence on the subject, as we cannot agree for reasons already sufficiently stated, on the beginning point. We consider our functions at an end. In answer however to so much of the communication of Col. Chambers, as refers to a subject not only not within the scope of either statute, under which we have been conjointly called on to act, but expressly excluded by both, we would only remark, that the first allusion to it was seen by us with infinite surprise and regret, and that we felt constrained to notice it only as a question no longer open, and as beyond the bounds of

our legitimate enquiries, which we have uniformly considered as extending only to the settlement of, and not the stirring up of questions.

H. L. OPIE,
THOMPSON F. MASON.
HERMAN BOYE.

True copy from the original.

Test, JOHN BREWER,
Secretary to the Maryland Commissioners.

1750
636 (B)
COMMUNICATION

OF

E. F. CHAMBERS, ESQ.

One of the Commissioners on the Western Boundary

TO THE

LEGISLATURE.

ANNAPOLIS.

J. HUGHES, PRINTER.

1837

4

1800

1800

1800

1800

1800

1800

REPORT.

*To the Honorable the President of the Senate,
And the Honorable the Speaker of the House of Delegates.*

The undersigned takes leave to present for the information of the legislature, such facts in relation to the progress which has been made in execution of the act of 1818, chapter 206, as appeared proper to be subjoined to the report of this date made by Col. Boyle.

An interview with the Virginia commissioners, induced me to believe at a very early period, that an agreement on the subject of the boundary line could not be made, except on the terms of commencing at the particular spot at which was placed the stone called the "Fairfax Stone."

All the intelligence which could be procured, and a plot of the various streams forming the head waters of the North Branch of the Potomac, of the correctness of which, there was every reason to be convinced, had persuaded me that the Fairfax Stone was not situated at the most western source of the North Branch.

These facts suggested the conclusion, that to avoid additional expense to the state, we should decline all further negotiation.

Upon our proposing to the Virginia commissioners the enquiry whether they held themselves concluded by the terms of this act of assembly or their commission, to commence the location of the line at the Fairfax Stone, they declined giving such a definite answer as would have justified us in terminating the negotiation.

We therefore proceeded to an examination of the several streams forming the head waters of the North Branch, and to trace to its source the stream at the fountain of which is placed the Fairfax Stone.

The examination resulted in the entire conviction of the commissioners from Maryland, that the point at which the Fairfax Stone was placed, could not be considered the most westerly source, or the first fountain of the North Branch.

With this conviction on the part of the Maryland Commissioners, the correspondence was conducted with the Virginia Commissioners, which is communicated with Col. Boyle's report, to which for this purpose I must refer.

Anticipating the possibility of a future prosecution of the claim of this state to all the territory north of the South Branch, which the legislature by the act of 1818, had for the first time manifested an intention upon any terms to relinquish, and then as it would appear only in a liberal spirit of compromise; it occurred to me

that we should cautiously guard against a course of proceeding by which such a claim would in any manner be weakened or injured, in the event of a failure on the part of the state of Virginia to meet the liberal views of the act of 1818.

The language of the Virginia Commissioners appeared to justify the inference that they too had reference to ulterior measures, which might grow out of the present effort to conclude an arrangement on the subject]

These considerations induced me to differ with my friend Col. Boyle on the propriety of remarking on the strange and untenable positions in the communication of the Virginia Commissioners of date 7th August, 1824.

It was a matter of regret with me to differ with my worthy colleague in reference to another subject, which it appeared to me might involve the interest of the state, and the convenience of her citizens residing in or adjacent to the disputed territory. A very considerable expense had been necessarily incurred in procuring competent engineers and proper instruments to enable us to run a meridian line with perfect accuracy. The United States corps of engineers had in the most polite manner gratified our application in the loan of instruments to supply the place of our broken transit instrument. In a line of more than thirty miles in length, as we were taught to expect this to be, it became exceedingly important to

avoid the error which the ordinary variation of the compass would produce, and which it was possible would be more considerable in this very mountainous region of country.

The importance of a correct meridian line appeared to me manifest, if the two states should hereafter resolve to conclude an agreement, having for its basis the line thus to be run, or any other line in the vicinity of it, in as much as it would supersede the necessity of employing any other than a common practical surveyor. Should no such agreement be entered into, it yet appeared to me desirable that such a line should be run, and its relation to the streams of the river be delineated for the information of the proper authorities of the state. The almost inaccessible character of that particular district of country, and the consequent absence of accurate information respecting it, has been the source, it is believed, of the conflicting opinions entertained by the States of Maryland and Virginia, as well as of the general expressions in the original grants which have been the subjects of their various constructions. These considerations influenced me to suggest the propriety of causing a meridian line to be run from the Fairfax Stone, or from the Western source (as the Maryland Commissioners consider it to be,) or from both points.

Col Boyle was not of opinion that the advantage

which I have suggested would result from the running of such a line, or that the benefit to be obtained by it would compensate for the increased expense. He was also of opinion that it was not desirable to do any act which might in any manner commit this state, even indirectly upon the principles proposed by the act of the Virginia Legislature, or indeed by our own act of 1818, which act he thought it would be the interest of the state to repeal. This disagreement in our views necessarily prevented the running of the proposed line.

The accompanying plot which it is believed presents an accurate deliniation, will enable the Legislature to understand fully the views in which this subject has been considered. The supposed necessity of this plot which by accident was not received until a few days ago, must account for the lateness of the period at which this report is made.

The accounts of expenditures incurred in the progress of this transaction were placed in part under the care of Mr. Thomas Sudler, our engineer, and have not been furnished to me by him. As soon as they can be procured, they shall be submitted, to be disposed of as the legislature may direct.

The necessary advances in cash, have been made almost entirely from my private purse, and to a considerable extent.

In conclusion, I take leave to suggest the propriety of further legislative provision on this subject. The charter of our state unquestionably entitles her to claim as far south as to the first fountain of the Potomac; she has uniformly claimed that the first fountain of this river was to be found at the head of the south branch, and it is confidently believed, that no official proceedings has ever sanctioned a different location.

The placing of Lord Fairfax's stone, was the gratuitous act of an individual or individuals, whose immediate intrust was to be promoted by removing the western limit of this state, as far north as possible, and who did not pretend or profess to act in virtue of authority derived from this state. A variety of circumstances have concurred to prevent a perfect exposition of facts connected with the controversy, and finally the state of Virginia has declined acceding to the proposal made in our act of 1818, by which a compromise was offered, which would give to Virginia nearly the whole of the disputed territory.

It is not my province to suggest a course for legislative adoption, but it may be proper to remark, that should the Legislature be willing to accept the line proposed by the state of Virginia, it will be necessary to modify the provisions of the act of 1818.

Before closing this report I must claim excuse from the Legislature in yielding for a moment to the influence of those feelings which have been witnessed in every

portion of our state, on the death of two of our most distinguished and most useful citizens, successively appointed to act on this subject. The universal sympathy which has every where soothed the sorrows of their immediate relatives, while it has proclaimed the just tribute of admiration for the merits of our deceased brethren, has also fully manifested the correct estimate which had been formed of their accomplishments, their virtues and their usefulness.

In the numerous inflictions of a mysterious Providence, which have deprived the state within a short period, of some of her highest ornaments, she will long have just occasion to deplore with peculiar and with the deepest concern, the unrelenting mandate, which has robbed her senate of a most distinguished member, and her bench of one of the most able jurists that ever graced her courts.

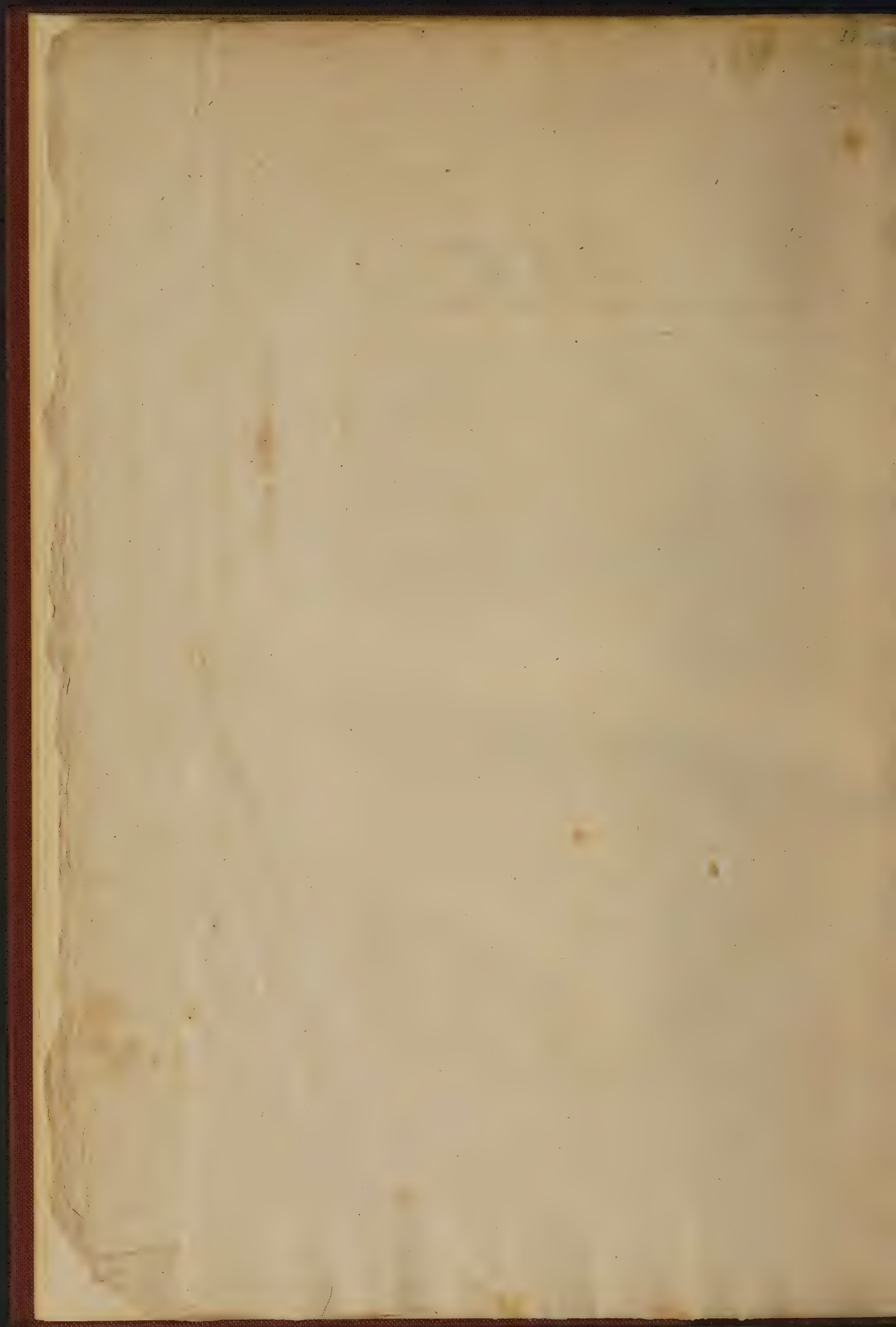
I have the honor to be,

With great respect,

Your obedient servant,

E. F. CHAMBERS.

Annapolis 19th January, 1825.



125
1865

EXECUTIVE MESSAGE

ON THE

Western Boundary

OF THE

S T A T E .

==

ANNAPOLIS:

J. HUGHES, PRINTER.

1825

I

COMMUNICATION.

IN COUNCIL, January 19, 1825.

The Honorable The Speaker of

The House of Delegates,

SIR,—In compliance with an order of the House of Delegates of the 15th inst. relative to proceedings under the law of 1818, chapter 206, providing for the adjustment of the western boundary line of this state, we have the honor to inform you that it appears from the records of this department, that a communication was made to the Legislature on the 9th day of December, 1822, by my predecessor in office, giving certain information upon the subject, to which we beg leave to refer you.

It becomes our duty in further compliance with your order to communicate the painful intelligence of the great loss the state has suffered by the death of two of her most esteemed and eminent citizens, the late General Wm. H. Winder, one of the commissioners originally appointed, and the late Chancellor Johnson, who was appointed to fill the vacancy occasioned by his death. Upon the occurrence of this second vacancy, Reverdy Johnson, Esq. was appointed to supply the place. The Governor and Council are not in possession of any *official* informa-

tion in relation to the progress made by the commissioners in carrying the object of their appointment into effect not having received any official report from them, but they are verbally informed by two of the commissioners now in this city, that their report will be speedily made to the Legislature agreeably to the directions of the law.

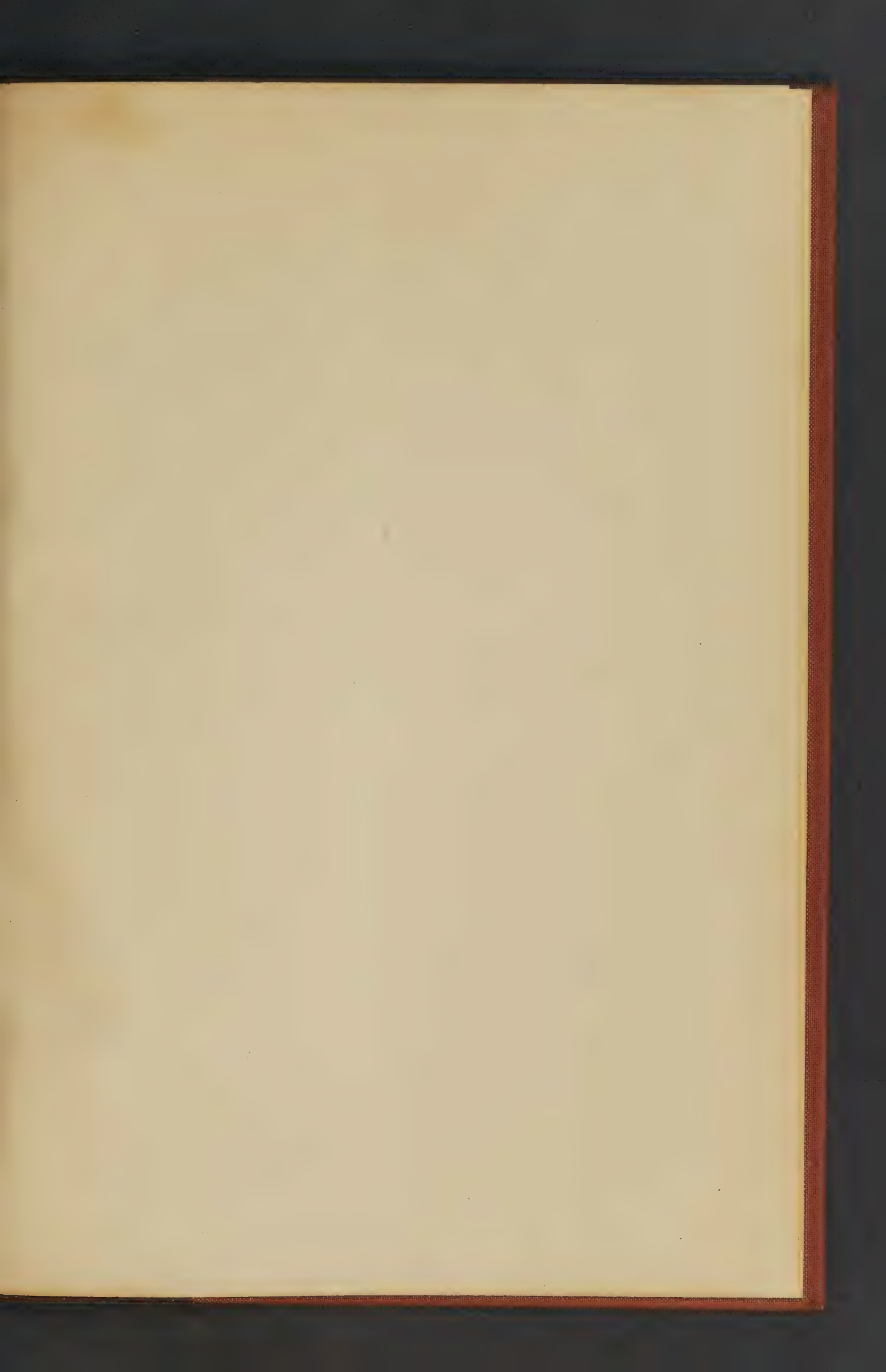
No correspondence has been had by the executive of this state with the executive of the state of Virginia, since the communication from this department before referred to, except what relates to the appointment of commissioners on the part of the respective states, the time and place of their meeting, &c.

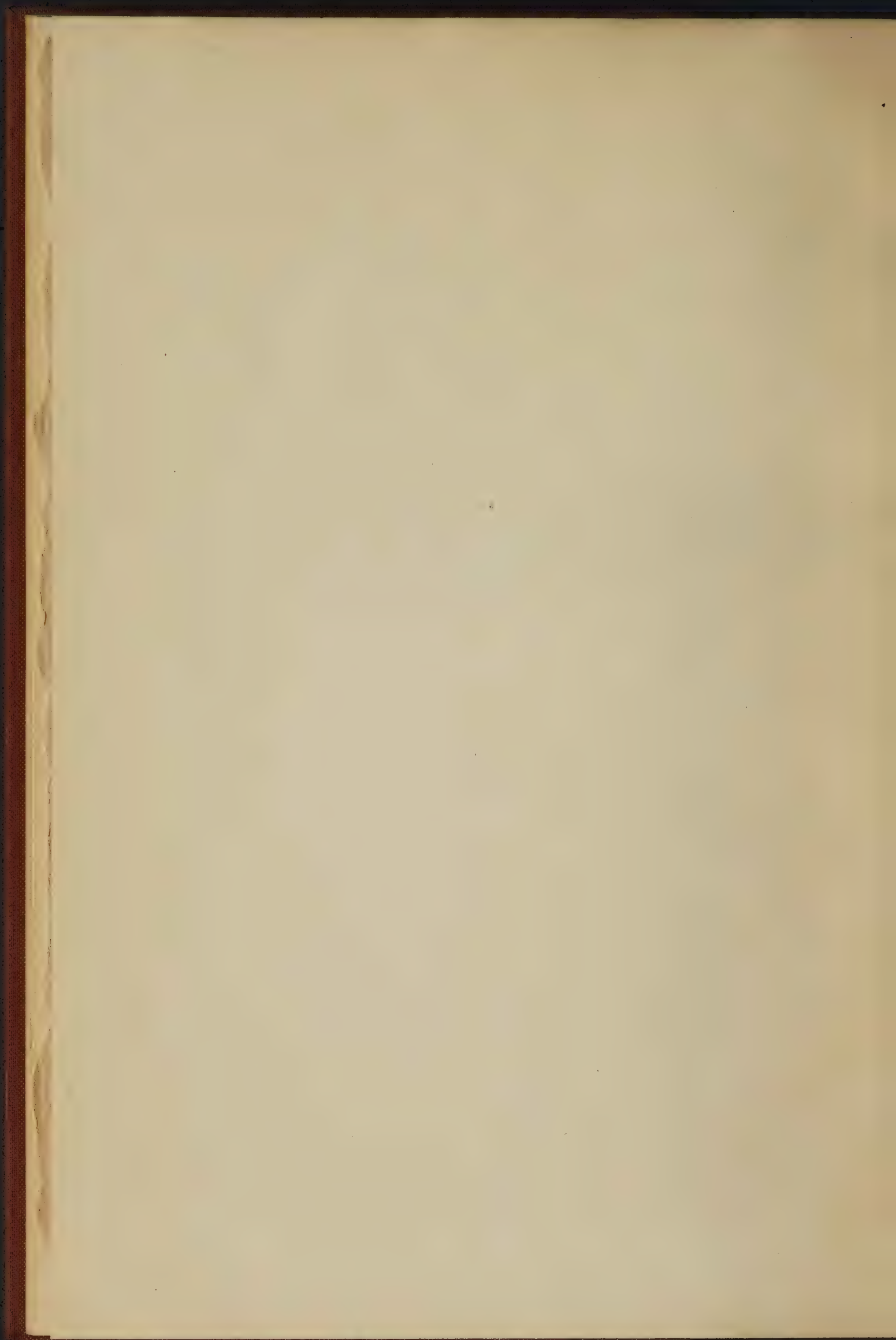
We have the honor to be,

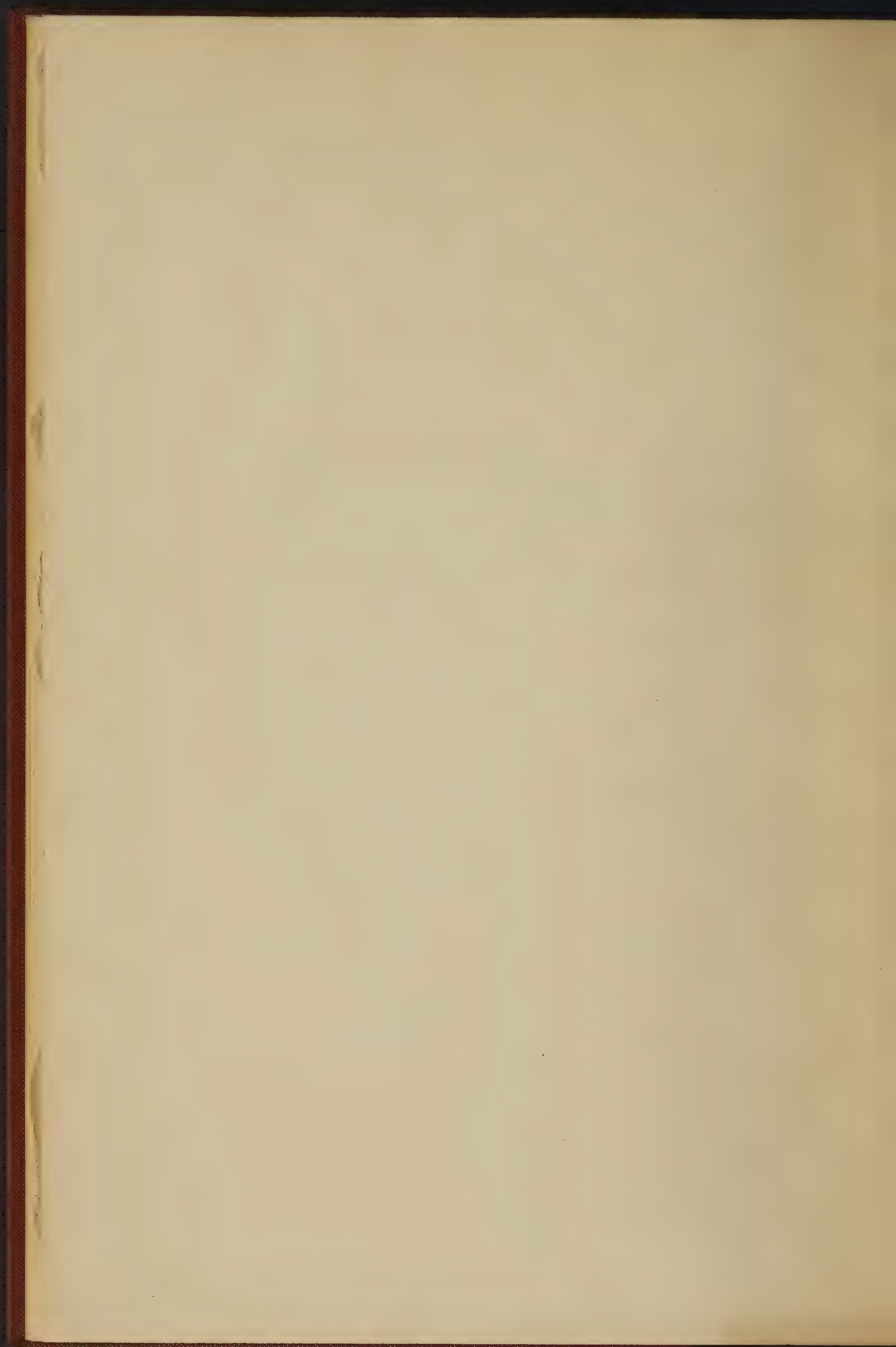
With great respect,

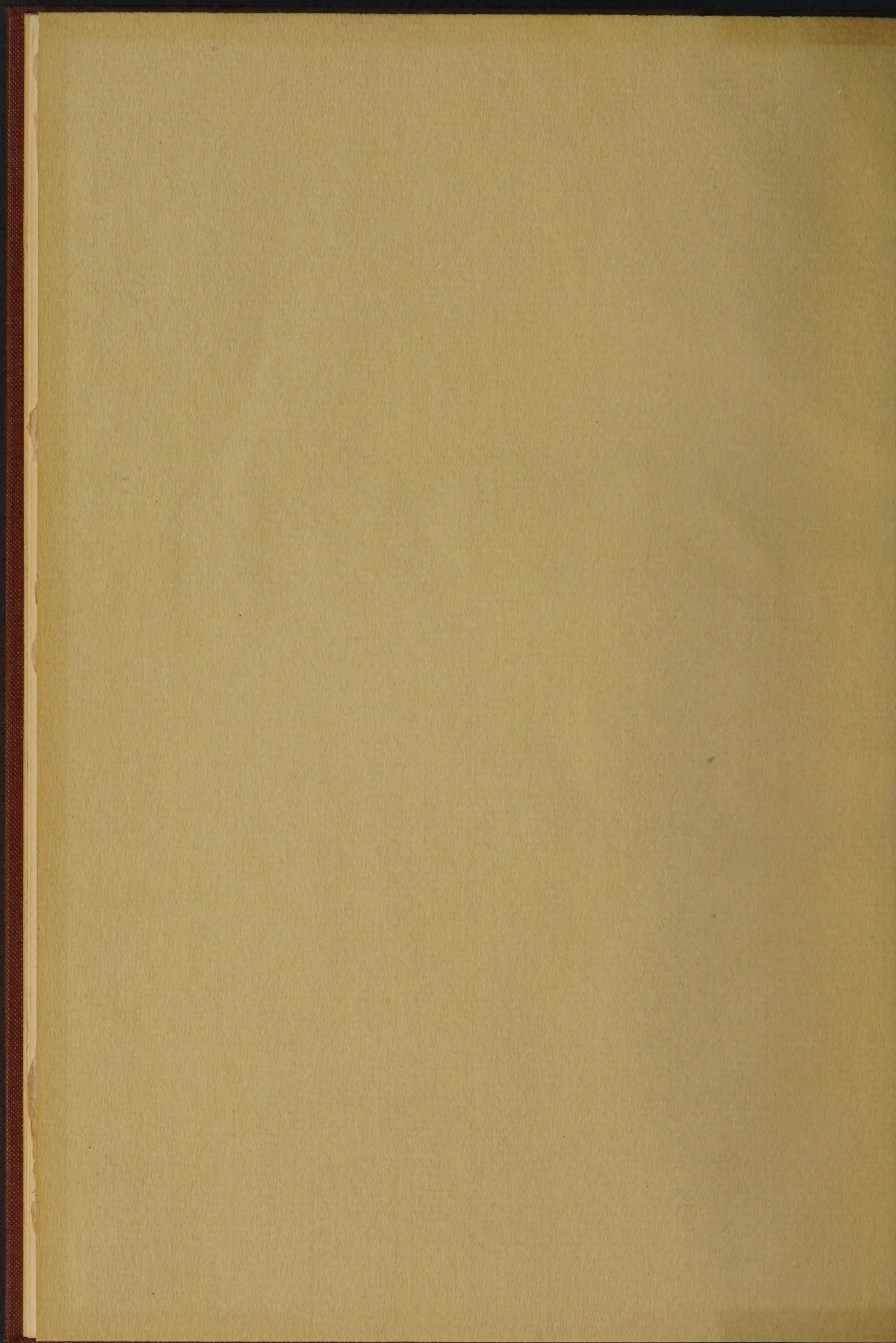
Your obedient servants,

SAMUEL STEVENS.









177530

1828300

